

Is There a Puzzle? Compliance with Minority Rights in Turkey (1999-2010)

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Is There a Puzzle?

Compliance with Minority Rights in Turkey (1999-2010)

Gözde Yilmaz

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IS THERE A PUZZLE?

COMPLIANCE WITH MINORITY RIGHTS IN TURKEY (1999-2010)

Gözde Yilmaz

Freie Universität Berlin

Abstract

The Helsinki Summit in 1999 represents a turning point for EU–Turkey relations. Turkey gained status as a formal candidate country for the EU providing a strong incentive to launch democratic reforms for the ultimate reward of membership. Since 2001, the country has launched a number of reforms in minority rights. Many controversial issues, such as denial of the existence of the Kurds, or the lack of property rights granted to non-Muslim minorities in the country, have made progress. Even though the reforms in minority rights may represent a tremendous step for the Europeanization process of Turkey, the compliance trend in minority rights is neither progressive nor smooth. While there is a consensus within the literature about the acceleration of reforms starting in 2002 and the slow down by 2005 in almost all policy areas, scholars are divided into two camps regarding the continuing slow down of the reform process or the revival of the reforms since 2008. I argue, in the present paper, that the compliance process with minority rights in Turkey is puzzling due to the differentiated outcome and the recent revival of behavioral compliance. I aim to shed light on the empirical facts in the least-likely area for reform in the enlargement process. Through a detailed analysis of minority-related reform process of Turkey being an instance of ongoing compliance, the paper contributes to the literature divided on the end result of Europeanization in the country recently.

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1. Introduction¹

The Helsinki Summit in 1999 represents a turning point for EU–Turkey relations. Turkey gained status as a formal candidate country for the EU providing a strong incentive to introduce democratic reforms for the ultimate reward of membership. Since 2001, the country has launched a number of reforms in minority rights. Many controversial issues, such as denial of the existence of the Kurds, or the lack of property rights granted to non-Muslim minorities in the country, have made progress.² Even though the reforms in minority rights may represent a tremendous step for the Europeanization process of Turkey, the compliance trend in minority rights is neither progressive nor smooth.

While there is a consensus within the literature about the acceleration of reforms starting in 2002 and the consequent slowing down by 2005 in almost all policy areas, scholars are divided into two camps, observing either the continuing slowdown of the reform process or the revival of the reforms since 2008. The stagnation camp (Saatçioğlu 2010; Öniş 2008, 2009; Schimmelfennig 2009) suggests that the reform process in Turkey has stagnated since 2005 without any recent development. In contrast, the revival camp (Oran 2009; Yilmaz 2009) stresses the revival of the reform process by 2008 in one of the most sensitive and the least-likely policy areas for reform: minority rights. Interestingly, these scholars emphasize the intensification of the implementation process by 2008, which is the most problematic area for progress in all policy areas, but especially in minority rights.

The assertion of complete stagnation in compliance with all policy areas since 2005 is problematic due to a number of factors. First, scholars who suggest a lack of change in Turkey since 2005 overlook the broad understanding of compliance comprising of both formal rule adoption and behavioral adoption or implementation. To illustrate this point, an analysis of the compliance with minority rights in Turkey since 2008 confirms the slowdown in formal rule adoption, however, without complete stagnation, and most importantly, the intensification of behavioral adoption. Therefore, any conclusion suggesting complete stagnation in the reform process of Turkey needs to differentiate between both formal rule adoption and behavioral adoption (and additionally even discursive adoption). Second, for a more nuanced analysis of the compliance process in Turkey, scholars need to clarify the references they use to judge the process as either slowing down or reviving, which depends on whether they analyze either the demands of the EU or on international demands in regard to any specific policy area. Third, the literature dealing with Turkey needs to justify its conclusions in regard to the compliance process by stating in which policy areas there is progress or slowdown or even revival, and why the conclusions in these policy areas could be generalized across all areas concerned with compliance or the lack of compliance with the specific demands of the EU or any other actor.

This paper aims to contribute to the debate in the literature by providing a broad and nuanced analysis of the compliance trend of Turkey in minority rights. I aim to analyze both formal and behavioral adoption in minority rights within the period beginning with the launch of candidate country status to the EU in

1 This paper has been made possible by the comments of Prof. Tanja A. Börzel and an anonymous reviewer, the Kolleg-Forschergruppe (KFG) “The Transformative Power of Europe” and the time devoted by the interviewees, helping me to map my research. Special thanks to all.

2 For instance, in the 1990s broadcasting in languages other than Turkish used in the daily life of Turkish citizens other than Turkish seemed unacceptable in Turkey. But the country began to broadcast in Kurdish by 2004.

1999 until 2010. I will divide this period into four different phases according to the change in compliance trend with minority rights: 1999-2001 as the preparatory phase; 2002-2004 as progress; 2005-2007 as the slowdown; and 2008-2010 as the revival.³ Such a trend is puzzling because the compliance process with minority rights in Turkey demonstrates several instances of differentiated compliance.

In this paper, I consider the problematic issues discussed above and aim to eliminate the problems in three ways. First, I analyze both formal rule adoption and behavioral adoption concerning minority rights in four different time periods. The analysis of both aspects and their division will prove a strong tool to grasp the complete process. Second, I focus on formal rule adoption and behavioral adoption while taking into account the demands of the EU, outlined in progress reports, regular reports, accession negotiations, and Council decisions as the main reference points. Judging the outcome as progress, slowdown, or revival will be subject to the degree of Turkish supply of reforms in response to the EU demands. Finally, minority policy is often regarded as too sensitive or too case-specific, which is usually overlooked in the literature (Liaras 2009: 1). The adoption of minority rules and their implementation is the least-likely area for reform in the enlargement process, not only for Turkey, but also for all candidate countries.⁴ Moreover, minority issues are closely related to a number of areas such as identity and citizenship, or national security, and therefore, represent a vital indicator for compliance. As a result, any improvement in the area could be evaluated as a strong indicator of the Europeanization process.

I argue that the compliance process with minority rights in Turkey is puzzling due to the differentiated outcome and the revival of recent behavioral compliance. I aim to shed light on the empirical facts in the least-likely area for reform in the enlargement process. Through a detailed analysis of minority-related reform process in Turkey as an instance of ongoing compliance, the paper contributes to the literature divided on the outcome of Europeanization in the country recently.

The first part of the paper focuses on the conceptualization of minority rights in the EU and international arena and the demands of the EU towards Turkey in regard to minority rights. In the second part, I clarify the situation of minority rights in Turkey prior to the launch of reforms. In the third part, I analyze the compliance trend of Turkey in minority rights by dividing the process into four periods. The fourth part provides an evaluation of the process.

3 The periods are derived from an empirical analysis of the minority-related reform process in Turkey.

4 This is due to country-specific factors such as the country's sensitive situation triggered by ethnic conflict with the Kurdish armed movement – PKK.

2. The EU and Minority Rights

2.1 *Any Standards of the EU on Minority Rights?*

International standards for minority rights were mostly shaped in the 1990s. However, there is still no consensus on the definition of minorities, as neither the United Nations (UN), nor the Council of Europe (CoE), or the Organization of Security and Cooperation in Europe (OSCE) as the active organizations for the protection of minorities, clarified it within their documents. Yet, the definition of Francesco Capotorti (1979) has been widely accepted by the international community, including the EU. Capotorti defines minorities on the basis of four characteristics (objective characteristics as the first three, and a subjective characteristic as the last): being a group of citizens who are different from the majority on the basis of race, religion or language; being a relatively small group; being non-dominant; determined to protect their identity, which differs from the majority's.

After clarifying the definition of minorities accepted in the international arena, the EU standards for the protection of minorities need to be mentioned. The protection of minorities has not been put under the jurisdiction of the EU for member states. Therefore, the EU leaves the issue of minority rights to the member states. However, the principles of respect for minorities and the protection of minorities have become a part of the EU enlargement policy since the 1993 Copenhagen Summit by the explicit reference to minority protection in the Copenhagen Criteria. As a result, double standards in minority rights have been a highly debated issue due to the EU's differential treatment of the issue concerning member and candidate states (Schwellnus 2001: 3).

The protection of minorities has been defined as a precondition for accession to the EU by the Copenhagen Criteria, the Maastricht Treaty, the Europe Agreements, and the Amsterdam Treaty. The definition of the issue as a precondition for enlargement was a result of the increase in ethnic and religious tensions in Europe after the end of the Cold War (Kurban 2008: 272). The security concerns of the EU, due to the transition process of the post-communist countries (e.g. the violent disintegration of the former Yugoslavia or any potential conflict in Central and Eastern Europe (CEE)) played a vital role for the inclusion of minority rights into the Copenhagen Criteria (Sasse 2008: 847). Moreover, in that process, the CoE and OSCE prepared a series of international documents providing positive rights to minorities. Being a member of the two aforementioned organizations, the EU has expanded its boundaries of enlargement policy to include minority rights (Kurban 2008: 272).

In spite of the increased attention of the EU to minority rights, the Union has still not established its own minority standards (Toggenburg 2000; Schwellnus et al. 2009). Despite the principle of non-discrimination, which is a part of *acquis communautaire* for the adoption by candidate countries, being a highly developed standard, minority rights remain a vague issue within the Union (Schwellnus 2005: 51). There is no minority standard for the internal *acquis* or within the EU member states; this compels the EU to refer to different European organizations' minority rights standards such as the CoE or OSCE (Schwellnus 2005: 56).

Since the EU considers protection of minorities only as a part of the Copenhagen Criteria, the impact of the EU on minority rights remains in the domain of enlargement policy. First of all, the Union expects candidate countries to join the CoE and comply with the standards of human and minority rights of the CoE (Ram 2003: 34). Second, the EU expects candidate countries to sign two main documents for minority

protection: the Council Directive 2000/43, comprising of the principle of non-discrimination, and the Council of Europe Framework Convention for the Protection of National Minorities. The latter document, which entered into force in 1998, was the first legally binding agreement on minority rights that requires the promotion of equality and conditions for the preservation of minority cultures and identities (Ram 2003: 35). Third, the Union monitors the protection of minorities in candidate countries by clarifying measures, specified for each country, to develop and adopt developing minority rights (Toktaş 2006: 2).

To summarize, minority protection has not developed as an EU rule and it remains a highly contested issue due to its nature, remaining within the sovereignty of the member countries. Moreover, EU conditionality in minority rights varies across candidate countries depending on the degree of their minority problems. Therefore, it is difficult to generalize the demands of the EU in regard to minority rights. The next section will focus on the demands of the EU from Turkey in minority rights.

2.2 *The Demands of the EU from Turkey in Regard to Minority Rights*

Although minority policies and practices are different in each EU member state, the EU clearly sets some guiding principles for minority protection in the enlargement process (Toktaş 2006: 13). The EU's requirements for minority protection are subjected to the same political conditionality that the accession to the EU is subject to. The demands of the EU are clarified as country-specific measures for adoption by candidate countries in the regular reports, progress reports, and Council decisions, which set the priorities for the Accession Partnerships.

The EU's priorities in minority protection, consistently demanded from Turkey between 1999 and 2010, include the ratification of the CoE Framework Convention for the Protection of National Minorities; removing the ban on broadcasting and education in languages other than Turkish and ensuring its implementation; the elimination of the limited interpretation of the 1923 Lausanne Treaty; resolving the problems in the Southeast of the country, both culturally and socio-economically (including the problems of Internally Displaced Persons (IDPs)) and the Kurdish issue; resolving the problems of non-Muslims and their foundations, such as granting property rights or removing the ban on training clergy and opening the Halki seminary for the training;⁵ and eliminating the problems of non-Sunni minorities (Alevi) (European Commission 1999, 2005, 2007, 2008, 2009). While analyzing the compliance process of Turkey, these priorities in minority rights need to be carefully considered. Set by the EU, they constitute the base for minority-related reforms in Turkey. In order to judge Turkey's compliance, I examine whether the demands in minority rights mostly pressured by the EU are dealt with or not by Turkey in the accession process.

I also analyze how the specific demands of the EU change during the four time periods by dividing them into demands in formal rule adoption and behavioral adoption. First, from 1999 to 2001, the EU placed significant emphasis on the Kurdish question in regard to minority rights. The Union emphasized the necessity to find a civil solution to the problem and also to provide democratic rights to the Kurds, such

5 The Halki Seminary is the training college for priests, which was closed by a decision of the Turkish Ministry of National Education on the grounds that the Seminary did not have enough students to continue to operate. Since then, it has not been re-opened.

as broadcasting in Kurdish (European Commission 1999: 14, 2000: 18). Moreover, the underdeveloped political and economic situation of the Southeastern part of the country populated by the Kurds was a reference to the development of minority rights in Turkey (European Commission 1999: 14, 2000: 18). The period shows the EU's tendency of equating the Kurdish issue in Turkey with minority rights, in order to provide a civil solution to the 30 year Kurdish-Turkish conflict.

During the second period, between 2002 and 2004, the EU continued to focus on the problems of Southeast Turkey by stressing the need to lift the emergency rule in this part of the country, the solution to the problem of IDPs, and the village guard system. Moreover, the EU widened its demands to include the implementation of the rules adopted in this period, such as the broadcasting in and learning of the different languages and dialects traditionally used by Turkish citizens in their daily lives, the measures in regard to the freedom of religion adopted in the area of property rights, and the construction of places of worship (European Commission 2002, 2003, 2004).

The problems of non-Muslim religious communities in the country included the legal personality and property rights of their foundations, the training of clergy, minority schools and their internal management, the restrictions on the exercise of cultural rights, and the restrictions on broadcasting in other languages (for television, four hours per week, while not exceeding 45 minutes per day; for radio, five hours per week, while not exceeding 60 minutes per day) were all under the increasing pressure of the EU for further improvement (European Commission 2002, 2003, 2004).

The EU changed its strategy since 2002 from insisting specifically on solving the Kurdish problem and equating it with minority protection measures, to a wide-range of improvements for all minorities. Such a change could be a result of refraining from pushing Turkey particularly to improve the most sensitive issues in minority rights. Therefore, the EU adopted a broader approach of minority protection, including the problems of Kurds, during this period to put pressure on the country and provide more scope for action to the Turkish government in the highly contested Kurdish issue.

Third, in the period between 2005 and 2007, the EU demanded that Turkey should further remove restrictions on minorities, such as the use of other languages by political parties, by stressing the duty of the Turkish government to ensure the exercise of the rights provided by the recent reforms for minorities (European Commission 2005, 2007). Additionally, some specific measures demanded by the EU included the abolishment of the requirement to indicate religion on ID cards, the solving of the difficulties experienced by non-Muslim minorities in acceding to administrative and military positions, to solve the problems of IDPs, and the need to eliminate discriminatory language in schoolbooks (European Commission 2005, 2007; European Commission against Racism and Intolerance 2005).

After the adoption of several minority-related rules by the country, the EU focused more on the problems based on behavioral adoption by Turkey, mainly on ongoing restrictions in a number of minority rights already provided previously. In this period, the EU also started to seek active participation of other European organizations in order to improve Turkey's minority protection. For instance, since 2005, the EU has emphasized the necessity of building dialogue between Turkey and the OSCE High Commissioner on National Minorities (HCNM) on issues such as the participation of minorities in public life (European Commission 2005, 2007).

Fourth, in the most recent period between 2008 and 2010, the EU provided a more detailed roadmap for Turkey to improve its minority rights and implement the provided rights smoothly. The focus was, again, on the implementation problems in spite of the improved legal protection of minorities in the country. A number of issues raised by the EU in this period were the problems of Roma and the necessity of building a strategy by the Turkish government to solve these problems, the need to cooperate with the OSCE and the need to amend the Law on the Movement and Residence of Aliens, which discriminated against Roma (European Commission 2008, 2009). Interestingly, the period again witnessed the increasing attention of the EU on the Kurdish problem and the consistent demands of the Union on solving the problem in each Commission report and document since 2008 (European Commission 2008, 2009).

Since 1999, the EU has insisted on the improvement of some specific minority-related issues each year and has specified its demands from Turkey through time. Three points arose from the analysis of the EU demands from Turkey in regard to minority rights. First, the EU consistently put pressure on Turkey to solve some basic problems, such as eliminating the restrictive definition of minorities in the country or ensuring broadcast and education in other languages used in the daily life of Turkish citizens. The Turkish government responded to some of the EU's demands, while others were ignored. Second, the EU has provided Turkey with a very detailed roadmap comprising of recommendations to improve minority protection throughout time. Since 2008, the EU has detailed the minority-related priorities to be considered by Turkey and how to take action in these areas. Last, the EU has directed its attention more to the problems in behavioral adoption of minority rights by Turkey since 2005. While demanding for further formal rule adoption in some areas, the EU has begun to pressure Turkey to assure smooth implementation of the rules adopted. The next section provides an analysis of the Turkish supply of formal rule adoption and behavioral adoption of minority rights in response to EU demands.

3. Minority Rights in Turkey Prior to the Reforms

Even though within the international arena the concept of minority defined by Capotorti (1979) was accepted, in Turkey the concept simply means “non-Muslim” citizens. The concept of minority in the country is derived from the 1923 Lausanne Peace Treaty, which is still in force today and cited by many as the official policy in regard to minority rights. The Treaty defines minorities in Turkey as non-Muslims limited to only Armenians, Greeks, and Jews. The rights of these minorities are under the protection of the international arena (i.e. the League of Nations at the time the treaty was signed). Therefore, Turkey has rejected the international definition of the minority concept on the basis of racial, linguistic, or religious differences (Oran 2004: 64). As a result, Turkey, from the very emergence of the Republic, has denied the existence of Muslim minorities such as Kurds and Alevis and their rights to preserve their differences (Grigoriadis 2008: 31).

The denial of Muslim minorities in Turkey has historical roots back in the Ottoman Empire. The *Millet System* of the Ottomans, which divided the subjects of the Sultan as Muslims and non-Muslims, has an explanatory power for the denial of Muslim minorities in Turkey. The system considered the subjects on the basis of religion dividing Muslims, regardless of ethnic origin, as one “Muslim Nation” or the “Dominant Nation” and non-Muslims as a “Dominated Nation” (Oran 2006: 50). As Oran (2006: 50) stresses, the system was both multicultural and discriminatory. After the granting of international protection for

minorities in the Ottoman Empire in the 17th century, a perception was developed in the society that treated minorities as a “threat” and as a potential tool for the international powers to interfere in the internal matters of the empire (Grigoriadis 2008: 34). These two characteristics have been preserved in today’s Turkish Republic.

As Oran (2009) stresses, the *Millet System* has been transferred to the Republic with some changes. The Treaty of Lausanne codified the system by preserving the non-Muslims as the “Dominated Nation” and changed the “Dominant Nation” into Muslim Turks (Oran 2009). Therefore, the discriminatory character of the *Millet System* has been preserved in Turkey with a denial of the existence of Muslim minorities and a restricted definition of non-Muslim minorities to Armenians, Greeks and Jews.

Until the early 2000s, Turkey did not have any legal document except the Lausanne Treaty dealing with minority rights. Moreover, in the 1982 Constitution no article dealing with minority rights was present. As is stated in the Minority Rights Group International Report on Turkey (2007: 10), “the Turkish constitutional scheme ‘solves’ the question of minorities without ever addressing it. There is no reference in the Constitution to the word ‘minority’, not even the Lausanne minorities”.

In addition, the Lausanne Treaty, as the only official document for minority protection, has not been fully implemented. In contrast, some articles of the 1982 Constitution were used to restrict minority rights. As Oran (2009) emphasizes, there were three types of standard violations for non-Muslim minority rights derived from the Lausanne Treaty: “Restrictions in education (violation of arts. 40 and 42/3); Language restrictions (’30s and ’60s; violation of art. 40); Restrictions imposed on minority religious foundations (violation of art.42/3)”. For example, Article 42 of the Turkish Constitution states that “No language other than Turkish can be taught as a mother language” and the Law on Political Parties states that “No language other than Turkish can be used by political parties in congresses, meetings [...]” (in violation of Lausanne 39/4) (Oran 2009; Minority Rights Group International Report on Turkey 2007: 15). A number of judicial cases have been launched against individuals and political parties (such as the closure of Kurdish political parties) by citing different articles of the Constitution (Minority Rights Group International Report on Turkey 2007: 15).

The situation of Muslim minorities, such as the Kurds and the Alevis, was made even worse because of the official denial of any specific rights. Moreover, a policy of Turkification for different ethnic minorities was implemented in the first years of the Republic (Çapar 2006: 83; Yegen 2006: 107). These assimilationist policies aimed to deny the cultural, religious, and ethnic differences of Muslim minorities, to eradicate the differences of these minorities through active pressure, and even to ban the exercising of languages, cultural traditions, and minority religions (Çapar 2006: 85). Even state officials asserted that, after the 1980 *coup d’état*, Kurds, as a different ethnic group, did not exist, but that the people labeling themselves as Kurds were actually Turks settled in the mountains of Anatolia a long time ago (Belge 2009). Such an official denial was pursued against many minorities until the turn of the 21st century (Grigoriadis 2008: 31).

The official rhetoric of Turkey, which has begun to change lately, is closely related to the definition of citizenship on the basis of ethnicity and religion which was present from the very emergence of the Turkish Republic in the 1920s. Article 66/1 of the Constitution of Turkey states that “Anybody who is bound

to the Turkish Republic by the citizenship ties is a Turk" (Oran 2004: 89). This definition binds citizenship to an ethnically-defined concept of Turkishness, implying being both ethnically Turkish and Sunni Muslim. Moreover, Oran (2004: 93) emphasizes that there have still not been any non-Muslim bureaucrats in any state departments except in arts institutions and universities. Such a definition, which is the source of the official rhetoric of Turkey, has alienated non-Muslim minorities as well as Muslim minorities, mainly Kurds and Alevis (Oran 2009).

To summarize, minorities in Turkey are still defined by the 1923 Lausanne Treaty limiting minority groups only to non-Muslims, specifically Armenians, Greeks, and Jews. Muslim minorities, on the other hand, were excluded by the Treaty, which was the only document providing specific rights to minorities. Therefore, Muslim minorities could not use their own language in schools or in media; just as they could not fully exercise their religious rights fully (Minority Rights Group International Report 2007:3). The Minority Rights Group International Report on Turkey (2007: 3) has given a clear portrayal of the historical setting of minority rights in the country: broadcasting in minority languages was forbidden for years; using minority languages in political life and in public services is still forbidden; more than a million people, mainly Kurds and Assyrians, were displaced from their homes in the Southeast; violence has been a part of daily life for minorities in Turkey (e.g. lootings of minority shops, murders of minority rights supporters); and an electoral threshold of 10 percent has still prevented minority political parties to enter the parliament.

Minority rights in Turkey, prior to the launch of the reforms in the area, were a restricted policy field, both rhetorically and practically. The denial of non-Muslims minorities, other than the three previously mentioned minority groups, along with various Muslim minorities, was part of the official policy. Moreover, the Lausanne Treaty, which granted certain rights to the chosen minorities, was not even fully implemented. Both the official and societal stance over minorities were shaped by the perception of minorities as "threats" to the integrity of the state, as a tool of foreign interference to the internal policies of the state and as second class citizens. Reforms of the previous policies concerning minority rights began to take shape at the turn of the 21st century.

4. Compliance with Minority Rights in Turkey: Formal Rule Adoption and Behavioral Adoption

In this part of the paper, I analyze the compliance trend of Turkey with minority rights by dividing the process into four periods: preparation phase (1999-2001), progress with acceleration of reforms (2002-2004), slowdown (2005-2007), and revival (2008-2010). I derived these periods through a close examination of empirical data related to minority-related compliance in Turkey. Even though the literature on Europeanization labels outcomes of compliance different from the present research, they are highly static (Börzel/Risse 2000; Radaelli 2003). In contrast, the process in Turkey is significantly dynamic. Due to the static nature of outcome indicators, which are not suitable to the Turkish case, I used the above-mentioned labels for the concerned periods.

I use formal rule adoption and behavioral adoption as indicators of compliance. As Schimmelfennig/Sedelmeier (2005) stress, rule adoption can take three different forms: formal, behavioral, and discursive adoption. The paper is only concerned with formal rule adoption and behavioral adoption. Formal rule

adoption conveys “the transposition of EU rules into national law or [...] the establishment of formal institutions and procedures in line with EU rules” (Schimmelfennig/Sedelmeier 2005: 8). Behavioral adoption is related to the degree of the adoption in which behavior is rule-conforming or not (Schimmelfennig/Sedelmeier 2005: 8).

In order to measure formal rule adoption, I will document the extent to which rules pertaining to minority rights are harmonized with European norms, which will be indicated by the removal of bans to ease the pressure on minorities and which will allow them to pursue their differences; laws providing minorities with new rights will also be counted. Behavioral adoption will be indicated by explicit implementation of the rules adopted.

Table 1: Measuring two Forms of Rule Adoption

Policy	Form of Adoption	Indicator
Minority-related policies	Formal: Extent of legal harmonization	Explicit legal adoption
	Behavioral: Implementation	Explicit implementation of the rules adopted

In the next sections, minority-related compliance in Turkey, indicated by formal rule adoption and behavioral adoption, will be analyzed in a detailed manner while also considering the direction of the reforms, which is mostly determined by the EU demands. One needs to keep in mind that minority rights, as the least-likely area for reform and as being connected to a number of different areas such as identity issues, citizenship matters, or national security, represent a vital indicator for the general compliance trend in Turkey (Liaras 2009: 1).

4.1 1999-2001: Preparation Phase

After the 1999 Helsinki decision granting candidate country status to Turkey, preparations started in order to fulfill the Copenhagen Criteria in various policy areas. I call this time period the preparation phase and it is indicated by the lack of change. The necessary institutions required for the launching of reforms were absent when the EU declared Turkey as a candidate country. Moreover, the National Program could only have been prepared and launched in 2001. Therefore, from 1999 to 2001, the government attempted to improve its institutional structure to prepare Turkey for the launching of various reforms. As a result, this time period can be labeled as a preparation phase for starting reforms.

In addition to the preparations, in 1999, the arrest of Abdullah Öcalan, the leader of the Kurdistan Workers Party (PKK), and the ceasefire between the PKK and the Turkish government, were vital developments in regard to minority rights. The developments can be evaluated as preparatory steps that enabled the

government to launch reforms in the following years without having enormous reactions against minority-related reforms because minority protection measures were in the past often translated by the public as giving concessions to the PKK (Öniş 2003: 14).

Considering the measures adopted in this period, in 2000 the Accession Partnership with the EU was signed and the National Program for the EU reforms was launched in the following year (European Commission 2001: 8). In 2000, the parliament established the Secretariat General for EU Affairs while, in 2001 the parliament amended the 1982 Turkish Constitution (European Commission 2001: 11-14). The amendments to the Constitution granted negative rights to the minorities by removing or amending some articles in the Constitution that were formally used to prosecute minorities. These changes can be considered as preparatory steps for future reforms.

The only change in this period, brought about by the 2001 Constitutional reform, related to minority rights via the removal of the sentence “No language prohibited by law can be used to express and diffuse thoughts” from the Constitution (European Commission 2001: 25). This removal granted the negative right of using languages other than Turkish in daily life of Turkish citizens (Oran 2004: 119).

Except for the removal of the aforementioned ban on using any language prohibited by law from the Constitution, there has not been any formal rule adoption related to minority rights. The preparation phase, as would be expected, did not witness any behavioral adoption due to the priority of formal rule adoption given by the government. As a result, two years of EU candidacy passed without the adoption of any significant minority measures. This period represents inertia in the compliance process of Turkey with minority rights. Preparations for further reforms had been prioritized in these years. The institutions required for providing expertise in the reform process were established with the necessary steps for planning the reforms, such as the preparation of the National Program, also being launched.

4.2 *2002-2004: Progress as the Acceleration of Reforms*

4.2.1 *Formal Rule Adoption*

Beginning in February 2002, the coalition government started to launch reforms for the legal harmonization of Turkish laws with EU laws. Eight reform packages passed the parliament between 2002 and 2004. After the 2002 elections, the Justice and Development Party (Adalet ve Kalkınma Partisi - AKP) government continued enthusiastically formal rule adoption in a number of policy areas, including minority rights. The reform packages included both amendments of some rules restricting minority rights and the adoption of new measures to improve minority protection.

In order to measure formal rule adoption, I compare the policies adopted over time with the initial policy. The period from 2002 to 2004 represents a breakthrough from the previous minority policy of the country. The initial policy was characterized by the denial of minorities and any different ethnic or religious groups in the country, a strict assimilationist policy against different groups other than the majority, the denial of any rights to minorities outside of the Lausanne Treaty, and the restriction of the rights of minorities which were recognized by Lausanne (Oran 2009).

The legal reforms in this period, therefore, represent a break from the previous policies and can be seen as providing a momentum for positive change in minority protection. Formal rule adoption was directed according to EU demands on minority rights. The most challenging and the important issue for the EU, the bans on broadcasting and education in languages other than Turkish used in daily life of Turkish citizens were eliminated during this period (Official Gazette 2002).

In an attempt to improve the socio-economic and cultural situation of Southeast Turkey, which is populated mainly by Kurds, a step-by-step approach was adopted by the government. First, the bans on using Kurdish including in education were removed by the reform packages (Minority Rights Group International 2007: 17). Second, the emergency rule in the Southeast was lifted entirely in the region in 2002. By signing the Ottawa Convention in 2004, the government also launched its program for removing landmines in the region (Hammarberg 2009: 14).

Formal rule adoption in this period was also concerned with the solution of non-Muslim minorities' problems. The problems in property rights of non-Muslim foundations were eased via an amendment to Article 1 of the Law on Foundations, including the extension of the application period for community foundations to register real estate holdings to eighteen months (Official Gazette 2003a). Another amendment to Article 2 of the Law on Construction was passed to allow for the building of worship places of various religions and faiths (Official Gazette 2003b).

One of the most important areas for the EU are the problems of non-Muslim minorities in Turkey, especially concerning property rights and the lack of legal personality of non-Muslim foundations. The amendment to the law concerning foundations in this period represents a response to this concern, though it remained limited. The government continued to amend the law concerning foundations until 2008, which provided further property rights to religious foundations.

The government also granted minorities some legal protection by ratifying international agreements: the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination in 2002, and both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 2003 (Secretariat General for EU Affairs 2007: 19). Moreover, a minority-related amendment was adopted during the 2004 Constitutional Reform Package on Article 90 concerning the ratification of international agreements to the Constitution (Secretariat General for EU Affairs 2007: 19). The amendment to the Constitution confirmed that, in the case that a conflict between a domestic and a ratified international convention on human rights occurred, the latter would take precedence (Grigoriadis 2008: 36). This would protect minorities in the case of a conflict between domestic and international conventions by bypassing the discriminatory domestic law in minority-related issues (Grigoriadis 2008: 36).

To summarize, formal rule adoption in this period represented a breakthrough - turning away from the historical legacy of minority rights in Turkey. A number of rules were adopted and amended by the government since 2002. Therefore, formal rule adoption in minority rights in this period was high and the period was labeled as progress. The Regular Report of the European Commission (2003: 43) acknowledged the acceleration of reforms in the country:

“Over the past year the Turkish government has shown great determination in accelerating the pace of reforms, which have brought far-reaching changes to the political and legal system. It has also taken important steps to ensure their effective implementation, in order to allow Turkish citizens to enjoy fundamental freedoms and human rights in line with European standards [...]. Some of the reforms carry great political significance as they impinge upon sensitive issues in the Turkish context, such as freedom of expression, freedom of demonstration, cultural rights and civilian control of the military.”

Table 2: The Demands of the EU and the Supply of Formal Rule Adoption by Turkey: 2002-2004

EU Demand	Turkish Supply
Ratification of the UN International Covenant on Civil and Political Rights with its Optional Protocol and of the UN International Covenant on Economic, Social and Cultural Rights (1)*	Signed in 2003 with reservations
The ratification of the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination (2)	Signed in 2002
Recognize the use of languages other than Turkish for broadcasting and eliminate restrictions (2)	2002, 2003 and 2004 recognized
Recognize the use of languages other than Turkish for education and eliminate restrictions (3)	2002, 2003 and 2004 recognized
Improve the situation in Southeast in terms of socio-economic development and cultural rights (1)	Improvement started in 2003
Lift the emergency status in Southeast (4)	Lifted entirely in 2002
Provide property rights to religious foundations (and implementation) (2)	Improvement started in 2003 with an amendment in foundations law
Clear the area of landmines (2)	Ottawa Convention signed in 2004
Eliminate the bans and restrictions on minorities to exercise their rights (1)	A series of amendments in a number of law for providing negative rights (removing bans)

*1 stressed in almost all EU documents under consideration

2 stressed in ¼ of the EU documents under consideration

3 stressed in ½ of the EU documents under consideration

4 stressed in less than ¼ of the EU documents under consideration⁶

4.2.2 Behavioral Adoption

Behavioral adoption, meaning rule-consistent behavior, in minority rights is indicated by the explicit implementation of the rules adopted in the previous years or periods by the concerned bureaucratic institutions, such as the Radio and Television Supreme Council (RTÜK) or the municipal representatives. Judging the implementation of the rules previously adopted by referencing the Commission reports and other sources, such as the reports of Freedom House, the Council of Europe, or Turkish newspapers, limited behavioral adoption is observed during this period.

6 Progress Reports and Regular Reports of the EU Commission and Council Decisions between 1999 and 2009.

During the 1990s, around 380,000 Kurdish villagers were forcefully displaced by the Turkish security forces due to the conflict with the PKK in the Southeastern part of the country (Human Rights Watch 2004; UN Human Rights Council 2010: 15). In order to facilitate the return of these villagers to their villages, the Turkish government launched the “Return to Village and Rehabilitation Project” (RVRP) (UN Human Rights Council 2010: 15).

Even though it is difficult to monitor the actual implementation of such programs official statements from Turkey suggested that the RVRP was further implemented in 2002. According to the Turkish authorities, 37,000 persons returned to their villages by 2002, such as Diyarbakır, Bingöl, Van and other areas of the Southeastern part of Turkey (European Commission 2002: 43). However, the numbers provided by the Turkish government are under suspicion because there are sources asserting that the government falsified the numbers: for instance, the report by Human Rights Watch (2004) states that the RVRP was not implemented in this period (Human Rights Watch 2004).

Implementation of the RVRP continued to proceed in 2003 according to information provided by the Turkish government. The Commission’s Regular Report (2003: 40) states that 82,000 people were authorized to return to their villages between January 2000 and January 2003. Moreover, Turkey began a dialogue with international organizations to address the weaknesses of the RVRP highlighted by the UN Secretary General’s Special Representative for Displaced Persons in 2002 (European Commission 2002: 43; Human Rights Watch 2004: 26). Nevertheless, the existence of village guards who occupied the deserted lands in the region, in some cases, is a vital factor preventing the successful implementation of the RVRP (Human Rights Watch 2004).

In regard to property rights, 2,234 applications for the registration of property in line with the January 2003 Regulation were concluded, but only 287 of them were accepted (European Commission 2004: 43). Only the 160 minority foundations listed in the Regulation could apply (European Commission 2004: 43). Because many non-Muslim religious communities are not entitled to establish foundations, they are deprived of the right to register, acquire and dispose of property.

Another positive development in 2003 was the finalization of the redrafting the descriptions of Christian denominations in religious educational textbooks (European Commission 2003: 35). A number of religious minorities criticized the textbooks for being subjective and inaccurate (European Commission 2003: 35). Concerning the situation of non-Sunni Muslim communities, there has been some change in regard to the Alevis. The banned Union of Alevi and Bektashi Associations was granted legal status in April 2003, allowing the Union to pursue its activities (European Commission 2003: 36). However, the problem of Alevis taking compulsory “religious culture and ethics class” in the schools continued during this period (Hammarberg 2009: 9).

The Kurdish Writers’ Association was established in Diyarbakır in 2004 despite the restriction in the current Law on Associations banning the establishment of any association on the basis of race, ethnicity, religion, sect, region or any other characteristics of minority groups (European Commission 2004: 42). When the association held a meeting with representatives of the European Commission without seeking prior permission, charges were brought against the association on the grounds of holding that meeting (European Commission 2004: 42). The implementation of the freedom of associations in regard to minorities was, therefore, mixed and incoherent in this period.

In 2004, both broadcasting and teaching in languages other than Turkish began. Even though there were some restrictions in the area, greater tolerance was achieved towards the use of other languages than Turkish. Six private schools started teaching Kurdish (Kirmanci dialect) in several cities (European Commission 2004: 49; Hammarberg 2009: 4).⁷ In October 2004, Istanbul's main synagogue was reopened after the 2003 bombing with an official ceremony attended by the Prime Minister Erdoğan (European Commission 2005: 430). In December 2004, a complex comprising of a mosque, church, and synagogue - "the garden of religions" - was opened in Belek (European Commission 2005: 30).

In the early phase of enacting the reforms, formal rule adoption in minority rights was complemented by behavioral adoption, such as broadcasting (Freedom House 2005). However, the implementation process in the years concerned was restricted. Many observers of the process ascribe the restricted implementation to the resistance of bureaucratic institutions, such as the RTÜK (Oran 2004: 127). The behavioral adoption that went hand-in-hand with formal rule adoption represents a vital development in minority rights, which is one of the most sensitive areas in Turkey, even if it remained limited. The period, however, was one of very limited behavioral adoption.

Table 3: The Demands of the EU and the Supply of Behavioral Adoption by Turkey: 2002-2004

EU Demand	Turkish Supply
Solve the problems of Internally-Displaced Persons (1)*	Return to Village and Rehabilitation Project further implemented
Provide rights to non-Sunni Muslims (Alevi) (3)	Some improvements on the legal status of non-Sunni associations in 2003
Provide and implement property rights to/of religious foundations (2)	Applications for the registration of foundations started to be received in 2003
Eliminate restrictions on broadcasting in other languages than Turkish and implement them (2)	Limited implementation in state television
Eliminate restrictions on education in other languages than Turkish and implement them (2)	Private schools have started to teach languages other than Turkish - but limited implementation
Revise the curricula in schools and remove discriminatory language from textbooks (3)	Finalization of the redrafting the descriptions of Christian denominations in religious education textbooks
Provide and ensure freedom of religious associations (1)	Kurdish Writers' Association, was established
Eliminate the problems in construction permits for places of worship (4)	- Istanbul's main synagogue was reopened - A complex comprising of a mosque, church and synagogue was opened - "the garden of religions" was opened in Belek

*1 stressed in almost all EU documents under consideration

2 stressed in ¼ of the EU documents under consideration

3 stressed in ½ of the EU documents under consideration

4 stressed in less than ¼ of the EU documents under consideration

The legal harmonization of Turkish minority-rights laws to EU standards between 2002 and 2004, backed up with limited implementation, was significant. As summarized above, there have been numerous amendments in the present laws, removal of articles or clauses limiting minority rights, and ratifications of several international agreements providing further protection of minorities. As the 2004 Commission Report (European Commission 2004: 55) emphasizes:

⁷ In Van, Batman, and Şanlıurfa in April 2004; in Diyarbakır and Adana in August 2004; and in Istanbul in October 2004.

“Turkey has achieved significant legislative progress in many areas, through further reform packages, constitutional changes and the adoption of a new Penal Code, and in particular in those identified as priorities in last year’s report and in the Accession Partnership. Important progress was made in the implementation of political reforms, but these need to be further consolidated and broadened. This applies to the strengthening and full implementation of provisions related to the respect of fundamental freedoms and protection of human rights, including women’s rights, trade union rights, minority rights and problems faced by non-Muslim religious communities.”

4.3 2005-2007: Slow down of the Reform Process

4.3.1 Formal Rule Adoption

Between 2005 and 2007, formal rule adoption slowed down significantly in minority rights. Even though there were some legal changes, such as the new Law on Foundations, or the adoption of the ninth harmonization package, formal rule adoption was inconclusive in this period when compared to the period between 2002 and 2004. Considering legal adoption and developments related to minority rights in this period, in July 2005 the Ministry of the Interior issued a circular for facilitating the voluntary return of IDPs, raising public awareness of the process and initiating further collaboration with non-governmental organizations (NGOs) (European Commission 2005: 39). The circular aimed to clarify the Governorships’ duty to take the necessary measures to facilitate voluntary return to the places in which security was successfully achieved and to make the process more transparent and participatory (Secretariat General for EU Affairs 2007: 22). Moreover, the Council of Ministers issued a strategy document, the Internally Displaced Persons Problem and Measures on Village Return and Rehabilitation Project, on August 17, 2005. This document clarified the aims and principles of the activities on IDPs (Secretariat General for EU Affairs 2007: 22).

On April 12, 2006, the ninth harmonization package was announced. The package included the legislation of the Law on Private Education Institutions which entered into force on February 14, 2007. The new law changed the previous law by removing the citation of “Turkish origin” as:

“if a Turkish citizen and teacher of Turkish language or Turkish culture knowing the education language of the school is not member of the teaching staff, any teacher of Turkish nationality can be the Deputy Director” (European Commission 2007: 21; Secretariat General for EU Affairs 2007: 24).

Therefore, the new law eased the limitations in schools established by foreigners including minority schools where the language of education is not Turkish.

On November 9, 2006, the Law on Foundations improving the status of minority foundations and allowing minority groups to reclaim their previously seized property was adopted by the Parliament and sent to the President for approval. However, the law was returned by the President to the Parliament for the clarification and discussion of some articles (European Commission 2007: 21; Secretariat General for EU Affairs 2007: 23). Additionally, on September 26, 2006, a new Law on Settlement eliminating discriminatory provisions against Roma was adopted (Secretariat General for EU Affairs 2007: 23).

Table 4: The Demands of the EU and the Supply of Formal Rule Adoption by Turkey: 2005-2007

EU Demand	Turkish Supply
Solve the problem of Internally Displaced Persons (1)*	- A circular for facilitating the voluntary return of internally displaced persons - A strategy document, the Internally Displaced Persons Problem and Measures on Village Return and Rehabilitation Project, on August 17, 2005
Improve the situation of Roma (3)	The new Law on Settlement, which eliminates any discriminatory provisions against Roma was approved by the Parliament.
Solve the problems of minority schools (3)	The new Law on Private Education Institutions eased the limitations in schools where the language of education is not Turkish and in schools established by foreigners, including minority schools.

*1 stressed in almost all EU documents under consideration

2 stressed in ¼ of the EU documents under consideration

3 stressed in ½ of the EU documents under consideration

4 stressed in less than ¼ of the EU documents under consideration

4.3.2 Behavioral Adoption

In this period of the reform process, the slowdown, especially in formal rule adoption, was considerable; however, formal rule adoption did not stop altogether. In contrast, the behavioral adoption continued to progress. As the report from Freedom House (2007: 2) states:

“Nevertheless, progress has not stopped altogether. For example, in 2005–06 a new penal code went into effect, an ombudsman office was established, and implementation of earlier reforms was systematically improved”.

Broadcasting in languages other than Turkish, including Kurdish, moved on further in 2007, despite some restrictions (Freedom House 2009: 3; UN Committee of the Elimination of Racial Discrimination 2007: 27). In March 2007, a new radio channel in Diyarbakır, Çağrı FM, received authorization to broadcast in Kırmanchi and Zaza Kurdish (European Commission 2007: 22). Although four local radio and TV stations broadcasting in Kurdish were established, there were still restrictions (European Commission 2007: 22; Freedom House 2009: 3). For instance, all broadcasts, except songs, have to be either translated or subtitled into Turkish, making broadcasts, especially live broadcasts, cumbersome (European Commission 2007: 22). Moreover, educational programs teaching Kurdish were neither allowed in TV, nor in radio broadcasts (European Commission 2007: 22).

The teaching of Kurdish also faced a backlash in August 2005, due to the closure of all existing Kurdish courses by their owners (European Commission 2005: 37; Freedom House 2007). Furthermore, two schools in Adana and Batman had closed down earlier in the same year due the financial difficulties (European Commission 2005: 37). The education in Kurdish in public schools was still banned by the Turkish authorities (Kurdish Human Rights Project 2004: 26).

The role of the judiciary in guaranteeing the right to use Kurdish was mixed. Even though the Court of Cassation revoked a decision banning the use of Kurdish music during an election campaign in May 2005,

a Criminal Court in Diyarbakir ordered the confiscation of a number of music albums on the basis of Article 312 of the former Penal Code, with the statement that the Kurdish-language lyrics constituted propaganda in support of an illegal organization (European Commission 2005: 38).

Moreover, the use of languages other than Turkish by public officials in their services was problematic in this period. In 2007, the Mayor of Sur (Diyarbakır) municipality was dismissed by the Council of State on the basis of initiating multilingual (Turkish, Kurdish, Armenian, Syriac, Arabic and English) municipal services (Hammarberg 2009: 5).

The registration of names other than Turkish also started to be implemented in this period by the civil registry offices (European Commission 2005: 38). However, the implementation varied throughout the country and faced some problems concerning the registration of certain Kurdish names (European Commission 2005: 38). Moreover, a circular has still been in force prohibiting the names including the letters “Q”, “W” and “X” which exist in Kurdish but not in Turkish (European Commission against Racism and Intolerance 2005: 22).

Even though Prime Minister Erdoğan, while visiting Diyarbakır in August 2005, met with Kurdish intellectuals and stressed the necessity to resolve the Kurdish problem through democratic means, members of the pro-Kurdish Democratic Society Party (DTP) have been repeatedly prosecuted for speech-related crimes (European Commission 2005: 38; Human Rights Watch 2007: 13).

Further efforts by the government have proven to ensure the opening and functioning of places of worship other than mosques (European Commission 2005: 30). For instance, in June 2005, a Protestant church in Diyarbakır was registered as a place of worship; in March 2005, a Protestant church was established as an association; and, in May 2005, the request of the Bahai community to renovate its garden was approved (European Commission 2005: 30).

In regard to property rights, 2,285 applications for the registration of property, in line with the 2003 Regulation, were made by the religious communities in 2005, with 341 of them being approved (European Commission 2005: 30). However, many non-Muslim religious communities are not recognized by the Turkish authorities in order to establish foundations, including the Catholic and Protestant communities. As a result, these communities are not granted the right to register and exercise property rights (European Commission 2005: 30; Minority Rights Group International 2007: 27).

Non-Muslim foundations did not acquire legal status during this period. Moreover, the Ecumenical Patriarch was not allowed to use the ecclesiastical title of the Ecumenical (Freedom House 2008: 15). Even though the Halki Seminary, the training college of priests in Turkey, was not opened in this period, there was no restriction on the employment of foreign clergy in the country (UN Committee on the Elimination of Racial Discrimination 2007: 21). In 2006, there were 122 foreign clergy registered with working permits to serve in worship places (UN Committee on the Elimination of Racial Discrimination 2007: 21).

In this period, hate crimes and acts of intolerance against non-Muslim minorities increased tremendously (Freedom House 2008: 15). For example, in 2006, a Catholic priest in Trabzon was murdered (Freedom House 2008: 15); in 2007, three Protestants in Malatya were murdered (Freedom House 2008: 15); also in 2007, the editor of the bilingual Turkish-Armenian newspaper Agos and human-rights defender

Hrant Dink was murdered (Human Rights Watch 2007: 12). Dink was prosecuted three times for speech-related offenses, which could be an example of the deadly consequence of such prosecutions and their publicization (Human Rights Watch 2007: 12). However, the judicial cases of these violent murders were merged together with the case against the criminal organization accused of plotting to overthrow the government, Ergenekon (CNN Turk 2010; Savaşta 2008a; Today's Zaman 2008b).

In 2007, there were also some positive developments in regard to the registration of religious associations. The Association for Supporting Jehovah's Witnesses, which had explicit religious objectives, was granted the right of official registration after the decision of the Court of Cassation, which confirmed the acquittal in a case against the association (European Commission 2007: 15).

The Law on Compensation of Losses Resulting from Terrorist Acts, adopted in 2004, has begun to be implemented with some delay and uncertainty (European Commission 2005: 38). By August 2005, the Turkish authorities reported that 173,208 applications had been made with the authorities deciding to provide compensation for the losses for 2,200 applications (European Commission 2005: 38). By March 2005, 212,000 Yeni Turk Lirasi (YTL) had been paid to 22 people whose applications were considered eligible by the evaluation commissions (European Commission 2005: 38). By May 2007, 269,759 persons had further applied to the Damage Assessment Commissions for compensation under the Compensation Law and 37,309 applications obtained a positive response (European Commission 2007: 23; Minority Rights Group International 2007: 27). Moreover, the number of Damage Assessment Commissions was increased to 106 (European Commission 2007: 23f.).

In spite of the developments stated by the Turkish government, the actual situation still contained a number of problems. The Report by Human Rights Watch (2004: 29-35) emphasized that the implementation had been problematic due to a lack of independence in assessment commissions, automatic exclusions from compensation, inappropriate limitations on acceptable forms of evidence, no compensation for suffering and distress, lack of legal support for applicants, limited capacity to process claims, lack of clarity regarding payments, and an inadequate appeals mechanism. Even though the law has not been implemented properly, it is promising and encouraging, as the report of Kurdish Human Rights Project states (2004: 20).

The period between 2005 and 2007 contained some formal rule adoption and a number of limited implementation attempts of the rules adopted by the concerned Turkish authorities. However, both formal rule adoption and rule-consistent behavior in this period were restrictive and limited. Therefore, this period can be seen as a phase of slowdown in regard to Turkish compliance with minority rights, when compared to the previous phase.

Table 5: The Demands of the EU and the Supply of Behavioral Adoption by Turkey: 2005-2007

EU Demand	Turkish Supply
Eliminate restrictions on broadcasting in languages other than Turkish (2)*	<ul style="list-style-type: none"> - Broadcasting in languages other than Turkish/limited - A radio station broadcasting programs on Christianity - Further implementation of broadcasting in languages other than Turkish. A new radio channel in Diyarbakır, Çağrı FM, received authorization to broadcast in Kirmanchi and Zaza Kurdish
Eliminate restrictions on education in languages other than Turkish (2)	Teaching in languages other than Turkish/limited
Eliminate restrictions on the use of languages other than Turkish in public life (1)	Registration of names in languages other than Turkish / limited and varied
Eliminate the problems of religious foundations (1)	<ul style="list-style-type: none"> - Establishment of equal treatment for Mosques and Christian churches regarding free access to water - A Protestant church was established as an association in Ankara - The Protestant church in Diyarbakır was finally able to register as a place of worship in 2005 - Further implementation in the registration of religious associations in 2006 - The Bahai community's request to renovate its garden was approved - Official registration of the Association for Supporting Jehovah's Witnesses
Provide and implement property rights to/for religious foundations (2)	2,285 applications for registration of property
Eliminate the problem of Internally Displaced Persons (1)	<ul style="list-style-type: none"> - The Law on Compensation of Losses Resulting from Terrorist Acts with 173,208 applications - With respect to Internally Displaced Persons, progress continued on the process of compensation

*1 stressed in almost all EU documents under consideration

2 stressed in ¼ of the EU documents under consideration

3 stressed in ½ of the EU documents under consideration

4 stressed in less than ¼ of the EU documents under consideration

4.4 2008-2010: Revival of the Reform Process

4.4.1 Formal Rule Adoption

The year 2008 represents the revival of formal rule adoption in minority rights in Turkey. After having a slowdown since 2005, a new Foundations Law was adopted in 2008 (Hammarberg 2009: 11). The law provided non-Muslim foundations to be represented in the Foundations' Council and provided for further property rights to these foundations (Hammarberg 2009: 11).

In regard to the problems in Southeast Turkey, the government announced guidelines of a plan aiming to further develop the region (European Commission 2008: 27; Freedom House 2009). The government assured the allocation of funding - equivalent to €14 billion - in order to complete the Southeastern Anatolia Project (GAP) between 2008 and 2012, with the plan being broken up into four pillars: economic development, social development, infrastructure development and institutional strengthening (European Commission 2008: 27).

2008 was a remarkable year also due to the developments experienced at the time. The *Ergenekon* case was launched in the same year, which indirectly affected the development of minority rights in the country (Laçiner 2009; Jones 2008; Freedom House 2009). The case charged a terrorist organization, called *Ergenekon*, which is characterized as nationalist (Öztürk/Subaşı 2008). The members of the organization included military officials, journalists, representatives of NGOs and civil society, as well as academics. The accusation against the members of the organization concerned plans to topple the government through a military intervention (Cizre/Walker 2010: 89). Moreover, they have been accused of organizing a number of provocative actions (assassinations, bombings, etc.) in order to prepare the preconditions for such a military intervention (Öztürk/Subaşı 2008). Additionally, the organization intended to deprive minorities of their political and cultural rights and of properties they owned after the planned military intervention appeared among the accusations against them (Dönmez/Kılıç 2009).

Some believed that the organization is “the last living extension of Gladio, a code name denoting the clandestine NATO stay-behind operation in Italy after World War II, intended to counter a possible communist invasion of Western Europe” (Today’s Zaman 2008a). Prime Minister Erdoğan also stated that the operation somehow resembles the “Clean Hands” operation in Italy against Gladio in the beginning of the 1990s (Zaman 2008). I assert that this judicial case is an opportunity for an opening up of Turkish democracy and it represents the deep transformation of Turkey into a more democratic state, allowing the country to make further progress in minority rights as well. However, the judicial case is still ongoing, debated in public and is very controversial.

In 2009, the government started both a parliamentary and public discussion in order to solve the Kurdish problem, which is a vital part of minority issues in the country (Freedom House 2010; Hürriyet 2010). Moreover, the discussion initiated public and political awareness for making peace with the PKK via the democratization of Turkey and the granting of further rights to Kurdish people, while also encompassing other minorities (Freedom House 2010; Hürriyet 2010). This was the second attempt by Turkish officials after the President Turgut Özal in 1990s, aimed to bring an end to the war in the East and Southeast of Turkey through further democratization (Sabah 2009). At the beginning of the 1990s, Özal recognized the existence of Kurds by declaring that his grandmother was a Kurd, and declared his aim to solve the Kurdish issue (Sabah 2009). However, the President died before solving the Kurdish problem and his Kurdish initiative was dropped until the 2009 initiative of Prime Minister Erdoğan.

In 2009, Erdoğan recognized the existence of the Kurdish people and the existence of a Kurdish problem (Hürriyet 2009). After the recognition by Erdoğan, a debate emerged about making peace with the PKK and solving the Kurdish problem. As a result of the debate 34 PKK members, as a peace activation group who were not related to any violent acts, returned to Turkey from a PKK base in Kandil, Northern Iraq, and were not charged with any crimes (Konuralp 2009). However, due to the detention and coercive treatments by Turkey in the latter months, 14 of them returned to the PKK Camp in Northern Iraq (Burulday 2010).

The Kurdish initiative represents a vital development in the Kurdish problem by departing from the previous official policy of Turkey in regard to the Kurdish issue. The Kurdish initiative, with a view to extending cultural and linguistic rights to the Kurdish minority, which was also perceived as a major problem in the EU accession talks, was an important step for further progress in the protection of minorities (Freedom House 2010: 4). However, the fate of the initiative has remained in doubt due to the ban of the DTP (Democratic Community Party) representing the Kurds and the protests following it (Freedom House 2010:4).

In June 2009, the Parliament adopted a Law on De-mining the Turkish-Syrian border, allowing private companies to de-mine the border (European Commission 2009: 30). With the law, the companies will receive a right to farm the land for up to 44 years after the de-mining is concluded (European Commission 2009: 30).

In 2010, a minority circular was published by Prime Minister Erdoğan, declaring the right of non-Muslim minorities to exercise their cultural rights, which are part of their identities (Official Gazette 2010). The circular states the problems faced by non-Muslim minorities in public institutions and the necessity of removing any problems caused by the representatives of the public institutions (Official Gazette 2010). The Circular also stresses the necessary implementation of minority rights provided by formal rule adoption in previous years (Official Gazette 2010).

In May 2010, another round of constitutional amendments was accepted by the Parliament. The amendments comprised a number of issues that did not directly deal with minority rights. However, one of the amendments indirectly improves minority protection by setting higher obstacles to the closure of political parties and, as a result, minority parties, such as the pro-Kurdish DTP, which was closed in 2009. After the amendment, the proposal for the closure of political parties can only be done by the Parliament that was previously proposed by the Constitutional Court (CNN Turk 2010).⁸

Table 6: The Demands of the EU and the Supply of Formal Rule Adoption by Turkey: 2008-2010

EU Demand	Turkish Supply
Provide and implement property rights to/for religious foundations (2)*	New foundations Law was adopted
No direct/concrete EU demand	The <i>Ergenekon</i> case was launched (related indirectly to minority rights)
Improve the situation in the Southeast in terms of socio-economic development and cultural rights (1)	A plan for development of the Southeast was adopted
Clear the area of landmines (2)	A law to remove landmines was adopted
Remove the village guard system (2)	Preparations to remove village guards system
Solve the Kurdish Question (2)	A debate was launched by the prime minister and 34 PKK members as a peace activation group, who were not related to violent acts, were welcomed from base from a PKK base (Kandil Mountain) and not punished (2009)
Ensure the implementation of minority rights (non-Muslim minorities) (1)	Minority Circular published in 2010
Closure of parties (2)	The closure of parties could only be proposed by the Parliament by 2010 Constitutional amendments

*1 stressed in almost all EU documents under consideration

2 stressed in ¾ of the EU documents under consideration

3 stressed in ½ of the EU documents under consideration

4 stressed in less than ¼ of the EU documents under consideration

8 The successful referendum for the approval of the Constitutional change was held in September 2010.

4.4.2 Behavioral Adoption

In the area of broadcasting in languages other than Turkish, following the June 2008 amendments to the relevant Law, in January 2009 TRT - the public service broadcaster - started operating channel TRT-6, broadcasting in Kurdish 24-hours a day (Hammarberg 2009: 5; Freedom House 2009). Moreover, at the inauguration ceremony of TRT-6, the Prime Minister spoke a few words in Kurdish. In 2009, the public radio network of the country also began to broadcast in Armenian. Moreover, more than ten private companies applied for regional and local broadcasting licenses in Kirmanchi, Zaza and Arabic in January 2010 (UN Human Rights Council 2010: 8).

In 2010, the movie “Min Dît - The Children of Diyarbakır” was released in movie theaters in Turkey (Gökçe/Özbudak 2010). For the first time, a movie, which is completely in Kurdish language, was allowed to be released in various movie theaters in the country. Onatlı (2010) emphasizes that the movie is the first instance of professional Kurdish cinema which was applauded by the public and even rewarded in Turkey.

In spite of the positive developments in the area of broadcasting, the restrictions in the Law on the RTÜK continue to be applied for private local and regional TV and radio programs (European Commission 2009: 30). For instance, educational programs in Kurdish are still not allowed; several court cases and investigations have been launched against GÜN TV – the only private TV channel currently broadcasting in Kurdish (European Commission 2009: 30).

In the area of education in languages other than Turkish, a number of positive developments were promoted. In September, the Higher Education Board’s (YÖK) approved the application from Artuklu University in Mardin to establish an Institute called “Living Languages Institute” providing post-graduate education in Kurdish and other languages spoken in the country (European Commission 2009: 29). After a judgment by the European Court of Human Rights (ECHR) in 2009, the president of the YÖK decided to include Kurdish in the language courses which are offered in university’s curriculum. The availability of such a course in the winter semester of 2009 at Bilgi University, Istanbul was also declared (Hammarberg 2009: 5).

Even though the use of languages other than Turkish in political life is forbidden by the Law on Elections and Political Parties, in the 2009 local election campaign Kurdish was used by politicians and political parties in their political activities without provoking any legal consequences (European Commission 2009: 28). Moreover, most of the court cases against Kurdish politicians for using the Kurdish language resulted with no penalty (European Commission 2009: 28). A number of governorships in the Southeast have begun to provide public services in Kurdish (European Commission 2009: 28).

In spite of these positive developments, the use of languages other than Turkish in political life is still problematic and results have been mixed in practice. For instance, in July 2009 the Court of Cassation charged the DTP members for using Kurdish in political life (European Commission 2009: 28). The charges resulted with the closure of the DTP in 2009 and the ban of 37 members of the DTP from political life (BBC Türkçe 2009; Sabah 2009).

The implementation of the Law on Foundations, adopted in 2008, proceeded smoothly (European Commission 2009: 21; UN Human Rights Council 2010: 17). Some progress has also been achieved by the Turkish authorities on providing work permits for foreign clergy who want to work in Turkey (European Commission 2009: 21; UN Human Rights Council 2010: 11). In 2008, the application of the Ecumenical Patriarchate for work permits were answered positively, including one-year visas for foreign clergy who work at the Patriarchate (European Commission 2009: 21; UN Human Rights Council 2010: 11). However, the Halki Seminary, the training college for priests, has remained closed since it was first closed in 1971 by a decision of the Turkish Ministry of National Education on the grounds that the Seminary did not have enough students to continue to operate (Hammarberg 2009: 10).

As regards the Alevis, there were some positive developments in this period. The Turkish authorities participated in a number of Alevi gatherings, such as the opening of the first Alevi Institute in 2008 and the Alevi fast-breaking ceremony in 2009 (European Commission 2009: 22). Moreover, the government organized workshops to discuss the problems and expectations of the Alevis (European Commission 2009: 22). The public service broadcaster also began to broadcast some programs on the Alevi Muharram celebrations (European Commission 2009: 22).

Even though Alevi places of worship (Cem houses) are not recognized as places of worship and do not receive financial aid from the state, Cem Houses were recognized by three municipal councils as places of worship and granted the same financial advantages as mosques (European Commission 2009: 22; Hammarberg 2009: 9). Some courts in several cities ruled that Alevi students do not have to attend the mandatory religion and ethics course (European Commission 2009: 22).

The *Newroz* (the Kurdish New Year) celebrations in 2009 were peaceful and without any police violence in the Southeast (European Commission 2009: 30). The permission to celebrate the *Newroz* was given by various Governorates in 2009 (European Commission 2009: 30).

The RVRP has been further implemented in this period. By the end of 2009, 151,469 citizens returned to their former places of residence (UN Human Rights Council 2010: 16). Moreover, the government implemented the “Support for the Development of an IDP Program in Turkey Project” in cooperation with the United Nations Development Program (UNDP) (UN Human Rights Council 2010: 16). In spite of these developments, the village guards have still not been removed from the region.

The government has also shown progress in the compensation of losses due to terrorism (European Commission 2009: 32; Freedom House 2009). Half of the received applications are processed and completed and two-thirds of them are accepted (European Commission 2009: 32). According to the UN Human Rights Council Report (2010: 16), in 2008, 360,933 applications were submitted to the compensation commissions, 207,765 were reviewed by the commissions, and 127,268 of them were awarded compensation. However, progress on payment of compensation remains slow (European Commission 2009: 32).

The problem of removing landmines still remains an important security concern in the country as there have been casualties among civilians and security forces caused by explosions of anti-personnel landmines (European Commission 2009: 32). After ratifying the Ottawa Convention in 2004 to gradually remove

landmines, the government began to destroy the anti-personnel mines in mined areas and hoped to conclude the de-mining process by 2014 (European Commission 2009: 32).

2008 has witnessed a series of implementation moves in the country. Several rules adopted in the previous periods have begun to be implemented such as broadcasting in other languages or the Foundations Law. A considerably tolerant environment has been reached in the period, in part due to the debates launched by the government on several issues which were not touched in the past such as the Armenian issue and Kurdish issue. This period is one of intensifying rule-conforming behavior.

Table 7: The Demands of the EU and the Supply of Behavioral Adoption by Turkey: 2008-2010

EU Demand	Turkish Supply
Eliminate restrictions on broadcasting in languages other than Turkish (2)*	<ul style="list-style-type: none"> - Broadcast nationally, all day long, in languages other than Turkish on state television, TRT - In January 2009 TRT started operating channel TRT-6, broadcasting in Kurdish 24-hours a day - Four local TV and radio channels started broadcasting in languages and dialects traditionally used by Turkish citizens - Broadcast in Armenian began on TRT (TV) for half an hour twice a day - Applications for three dialects in Kurdish and Arabic radio stations were approved - The public radio network started to broadcast in Armenian in March 2009
Eliminate restrictions on education in languages other than Turkish (2)	<ul style="list-style-type: none"> -The Higher Education Board (YÖK) endorsed the application from a Turkish University (Artuklu University in Mardin) to establish a "Living Languages Institute" which would provide post-graduate education in Kurdish and other languages spoken in the country - Kurdish as a language course offered in Bilgi University, Istanbul
Eliminate the ban on training clergy (comprising the issue) (1)	The Ecumenical Patriarchate's applications for work permits were answered positively
Remove landmines (2)	Under the Ottawa Convention, Turkey continues to destroy all anti-personnel mines in mined areas by March 2014.
Provide rights to non-Sunni Muslims (Alevi) (3)	<ul style="list-style-type: none"> -The opening of the first Alevi Institute -A municipal council recognized a Cem House as a place of worship and applied mosque tariffs to its water charges -Three municipal councils recognized Cem Houses as places of worship and granted them the same financial advantages as mosques -Administrative courts in Antalya, Ankara, Izmir and Istanbul ruled that Alevi students should be exempted from attending the mandatory religion and ethics course
Ensure the exercise of cultural rights of minorities (1)	Contrary to previous years, the <i>Newroz</i> celebrations in March 2009 passed by peacefully overall. Governorates in the region gave permission for celebrations

Provide and implement property rights to/for religious foundations (2)	Implementation of the Law on Foundations adopted in February 2008 proceeded smoothly
Eliminate restrictions on using languages other than Turkish in public life (1)	Governorships in several cities in the Southeast have started offering public services in Kurdish
Solve the problem of Internally-displaced Persons (1)	The process of compensation of losses due to terrorism continued to make progress
Solve the Kurdish Problem (2)	A wide-range public debate was initiated by Prime Minister Erdoğan to solve the Kurdish issue

*1 stressed in almost all EU documents under consideration

2 stressed in ¼ of the EU documents under consideration

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4 stressed in less than ¼ of the EU documents under consideration

4.5 *So What is Left?*

Since 2002, Ankara has adopted and amended a number of legal rules in regard to minority protection. Formal rule adoption in the country was intense between 2002 and 2004, while it slowed down by 2005. Even though the country has attained a high degree of change, especially with the acceleration of the reforms in minority rights by 2002, a number of legal adoptions have still not occurred. For instance, Turkey has neither signed the CoE Framework Convention for the Protection of National Minorities nor eliminated the restrictive interpretation of the Lausanne Treaty, which were consistently demanded by the EU (European Commission 2009: 28).

In contrast to formal rule adoption, behavioral adoption in minority rights has increased since 2002. By 2008, the rule-consistent behavior with minority rights has even intensified. However, this does not mean that behavioral adoption of minority protection rules in Turkey has been without any problems. The country has still had a restrictive implementation of minority rules in a number of areas such as the restrictions in the ban on using languages other than Turkish in political life (European Commission 2009: 28f.). These ignored areas, where room for further formal rule adoption and behavioral adoption in minority rights by the Turkish government is still possible, are provided in the table below.

To conclude, comparing the recent minority policy of the country with the previous decade, the improvement in the area cannot be denied. Although a number of problems remain unresolved in the area, the process has still been in progress. Therefore, time will show if further improvements in Turkey regarding minority rights are initiated.

Table 8: Unresolved Minority Issues: EU Demand- Turkey Supply

EU Demand	Turkish Supply
Adopt a strategy to solve the problems of Roma (3)	Improvement with the Law on Settlement in 2006 but not with a strategy
Signing the CoE Framework Convention for the Protection of National Minorities (1)	<u>Not</u> signed
Lift the reservation regarding minority rights in the UN Covenant on Economic, Social and Cultural Rights/Civil and Political Rights (2)	<u>Not</u> lifted
Recognition of all minorities (Muslim and non-Muslim), restricted interpretation of Lausanne Treaty (2)	<u>Not</u> recognized
Remove compulsory religious classes in public schools (2)	<u>Not</u> removed
Eliminate the ban on using languages other than Turkish in political life (3)	<u>Not</u> eliminated but tolerated in practice
Eliminate the ban on training clergy (Halki seminary problem (1)	<u>Not</u> eliminated
Provide children whose mother tongue is not Turkish with the ability to learn in their mother tongue in public schools (3)	<u>Not</u> provided
Solve the problems of minorities who have difficulties in reaching administrative and military positions (4)	<u>Not</u> solved
Provide the Ecumenical Patriarch public use of the ecclesiastical title of Ecumenical (3)	<u>Not</u> provided
Start a dialogue with OSCE High Commissioner on National Minorities (3)	<u>Not</u> started
Provide legal status to religious foundations (1)	<u>Not</u> provided
Eliminate the 10% threshold in the election system (4)	<u>Not</u> eliminated
Amend the Law on the Movement and Residence of Aliens discriminating Roma (4)	<u>Not</u> amended
Remove the village guard system (2)	<u>Not</u> removed

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5. Is there a Compliance Puzzle with Minority Rights in Turkey?

Since 2002, Turkey has adopted and amended a number of legal rules in regard to minority protection with intense implementation in recent years. The government's approach to dealing with minority rights endures as a basic non-discrimination policy rather than specific minority rights. The European Commission report (2007: 21) clarifies the Turkish minority policy in detail: "[...]the Turkish authorities consider Turkish citizens as individuals having equal rights before the law rather than as individuals belonging to the majority or to a minority".

The official minority policy, however, reflects confusion in both defining minorities and granting them legal protection. Most of the government representatives, in interviews done by the author, stated that

the Lausanne Treaty is the sole document defining minorities and the reforms launched since 2002 have been an attempt to reach a standard of equality before the law for all citizens of the country rather than reforms done for providing protection to minorities. Therefore, the concept of what constitutes a minority has still not been defined officially and reforms in regard to minority rights have been seen as providing a legal framework to prevent all kinds of discrimination. The ideal in the minds of the government is to reach European standards in human rights via further democratization for all citizens of Turkey regardless of their belonging to majority or minority groups.

Such a policy framework does not mean that Turkey has not progressed in the area of minority protection. In contrast, the positive changes are significant in both the daily life of the citizens of Turkey, and in legal and behavioral adoption. The country has attained a high degree of change in minority protection between 2002 and 2004, which has been pursued since 2008. Even though the recent legal reforms launched by the government are few, the implementation of the rules adopted in previous years has intensified since 2008.

Such a process, characterized by differentiated compliance, is puzzling due to a number of reasons. First, minority rights constitute the least-likely area for reform, because they are highly sensitive and touch upon even more sensitive issues, such as identity. Second, the recent developments demonstrate an intensification of rule-consistent behavior in Turkey. This is somewhat surprising because implementation was often the most problematic area in the accession process and the implementation of minority protection rules was even more problematic in many previous candidate countries. Last, considering the theoretical expectations, the compliance process with minority rights in Turkey represents a hard case to explain. For instance, one would expect the stagnation of the reform process as a whole after the decrease in the credibility of EU conditionality since 2005. However, this is not the case in the country. Explaining such a puzzling process should be the subject of further research.

To summarize, Turkey has a long path to pursue in order to improve its minority protection policies. There are still areas requiring not only legal changes, but also smooth implementation of those rules adopted. Whether the process of minority-related change in Turkey continues to progress in the direction of EU's roadmap is a question of time. The process has been recently revived and thus, it necessitates time to perceive if it turns into a continuum of change or not.

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